

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 1116

92ND GENERAL ASSEMBLY

Reported from the Committee on Commerce and the Environment, March 18, 2004, with recommendation that the Senate Committee Substitute do pass.

4079S.03C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 407.1095, 407.1098, 407.1101, and 407.1104, RSMo, and to enact in lieu thereof four new sections relating to the telemarketing no-call list.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 407.1095, 407.1098, 407.1101, and 407.1104, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 407.1095, 407.1098, 407.1101, and 407.1104, to read as follows:

407.1095. As used in sections 407.1095 to 407.1110, the following words and phrases mean:

(1) "Caller identification service", a type of telephone service which permits telephone subscribers to see the telephone number of incoming telephone calls;

(2) "Residential subscriber", a person who has subscribed to **any residential telephone service [from a local exchange company], including wireless telephone service,** or the other persons living or residing with such person;

(3) "**Subscriber**", a **wireless business subscriber or a residential subscriber;**

(4) "Telephone solicitation", any voice communication [over a telephone line] from a live operator, through the use of [ADAD] **automatic dial answering device** equipment or by other means for the purpose of encouraging the purchase or rental of, or investment in, property, goods or services, but does not include communications:

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

(a) To any [residential] subscriber with that subscriber's prior express invitation or permission;

(b) By or on behalf of any person or entity with whom a [residential] subscriber has had a business contact within the past one hundred eighty days or a current business or personal relationship;

(c) By or on behalf of an entity organized pursuant to Chapter 501(c)(3) of the United States Internal Revenue Code, while such entity is engaged in fund-raising to support the charitable purpose for which the entity was established provided that a bona fide member of such exempt organization makes the voice communication;

(d) By or on behalf of any entity over which a federal agency has regulatory authority to the extent that:

a. Subject to such authority, the entity is required to maintain a license, permit or certificate to sell or provide the merchandise being offered through telemarketing; and

b. The entity is required by law or rule to develop and maintain a no-call list;

(e) By a natural person responding to a referral, or working from his or her primary residence, or a person licensed by the state of Missouri to carry out a trade, occupation or profession who is setting or attempting to set an appointment for actions relating to that licensed trade, occupation or profession within the state or counties contiguous to the state;

(5) "Wireless business subscriber", a person who, primarily for business use, has subscribed to any wireless telephone service.

407.1098. [1.] No person or entity shall make or cause to be made any telephone solicitation to [the telephone line of] any [residential] subscriber in this state who has given notice to the attorney general, in accordance with rules promulgated pursuant to section 407.1101 of such subscriber's objection to receiving telephone solicitations.

[2. This section shall take effect on July 1, 2001.]

407.1101. 1. The attorney general shall establish and provide for the operation of a database to compile a list of telephone numbers of [residential] subscribers who object to receiving telephone solicitations. [The attorney general shall have such database in operation no later than July 1, 2001.]

2. [No later than January 1, 2001,] The attorney general shall promulgate rules and regulations governing the establishment of a state no-call database as

he or she deems necessary and appropriate to fully implement the provisions of sections 407.1095 to 407.1110. The rules and regulations shall include those which:

(1) Specify the methods by which each [residential] subscriber may give notice to the attorney general or its contractor of his or her objection to receiving such solicitations or revocation of such notice. There shall be no cost to the subscriber for joining the database;

(2) Specify the length of time for which a notice of objection shall be effective and the effect of a change of telephone number on such notice;

(3) Specify the methods by which such objections and revocations shall be collected and added to the database;

(4) Specify the methods by which any person or entity desiring to make telephone solicitations will obtain access to the database as required to avoid calling the telephone numbers of [residential] subscribers included in the database, including the cost assessed to that person or entity for access to the database;

(5) Specify such other matters relating to the database that the attorney general deems desirable.

3. If the Federal Communications Commission establishes a single national database of telephone numbers of subscribers who object to receiving telephone solicitations pursuant to 47 U.S.C., Section 227(c)(3), the attorney general shall include that part of such single national database that relates to Missouri in the database established pursuant to this section.

4. Information contained in the database established pursuant to this section shall be used only for the purpose of compliance with section 407.1098 and this section or in a proceeding or action pursuant to section 407.1107. Such information shall not be considered a public record pursuant to chapter 610, RSMo.

5. In April, July, October and January of each year, the attorney general shall be encouraged to obtain subscription listings of [consumers] **subscribers** in this state who have arranged to be included on any national do-not-call list and add those [names] **telephone numbers** to the state do-not-call list.

6. The attorney general may utilize moneys appropriated from general revenue and moneys appropriated from the merchandising practices revolving fund established in section 407.140 for the purposes of establishing and operating the state no-call database.

7. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in sections 407.1095 to 407.1110 shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2000, shall be invalid and void.

407.1104. 1. Any person or entity who makes a telephone solicitation to [the telephone line of] any [residential] subscriber in this state shall, at the beginning of such call, state clearly the identity of the person or entity initiating the call.

2. No person or entity who makes a telephone solicitation [to the telephone line of a residential subscriber] in this state shall knowingly use any method to block or otherwise circumvent [such] **any** subscriber's use of a caller identification service.

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